

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING INTERVENOR STATUS, EXTENDING TIME FOR SUBMISSION
OF COMMENTS ON LOCAL ENERGY EFFICIENCY PROPOSALS,
DENYING MOTION FOR ADDITIONAL TIME TO FILE STATEWIDE ENERGY
EFFICIENCY PROPOSALS, AND EXCUSING LATE FILING
OR SERVICE OF CERTAIN ENERGY EFFICIENCY PROPOSALS**

This ruling grants the following parties' motions to intervene: Public Citizen, the California Department of Consumer Affairs (DCA), and Precision Reflector Designs, Inc. (Precision). The ruling extends by two weeks, to February 14, 2002, the due date for comments on local energy efficiency proposals filed on January 15, 2002. Reply comments are due on March 15, 2002. I deny a pending motion seeking to extend the December 14, 2001 deadline for filing and serving statewide energy efficiency proposals. Upon request, I excuse the late proposal filings and/or service of the California State University (CSU), Robert Mowris & Associates (Mowris), and the DCA, and define what qualifies as a timely local proposal.

A. Petitions to Intervene

Three entities – Public Citizen, the DCA and Precision – seek “intervenor”/“party” status in this proceeding. I grant each petition.

Public Citizen is a “30-year old national consumer advocacy organization with 25,000 members in California.” It states it “is interested in assisting the Commission in evaluating all aspects of these [energy efficiency] programs” and that “no other party represents the interests represented by Public Citizen.” While Public Citizen should have furnished better information about its interest in energy efficiency, and about why no other party represents the interests it represents, I will address those issues if and when Public Citizen files a Notice of Intent to Claim Compensation, as it states is its plan. Given the wealth of private interests represented in this proceeding, it appears prudent to allow additional consumer advocacy participation, and therefore I grant Public Citizen's motion to intervene. Nothing in this ruling addresses Public Citizen's right to intervenor compensation, which I will address separately.

The DCA “has been closely involved with California’s energy situation; its *Flex Your Power* statewide information campaign has been credited with helping to achieve an unprecedented level of energy conservation.” As such, it has sufficient interest in this proceeding to be granted party status.

Precision is an applicant for local energy efficiency funding. Although its application automatically makes it party to this proceeding, we affirm that it holds such status. Other third parties who filed local energy efficiency proposals need not file Petitions to Intervene in order for the Commission to consider their timely filed and served proposals. I define what is considered “timely” in Section D(3) of this ruling.

B. Extension of Time to Comment on Local Program Proposals

The response to our third-party local energy efficiency program solicitation was extensive. In the days following the January 15, 2002 deadline, it became clear that the number of proposals filed and served was quite high, and

that it would take parties wishing to file comments some time to organize and review them.

For this reason, I grant all parties a two-week extension of time to submit comments on the local program proposals. Comments shall be filed and served no later than February 14, 2002 at 5:00 p.m. Pacific Time. Reply comments shall be served and filed no later than March 15, 2002 at 5:00 p.m. Pacific Time.

By the time this ruling issues, all timely local proposals should appear on the Commission's website at <http://www.cpuc.ca.gov/static/industry/electric/energy+efficiency/energy+efficiency+rulemaking.htm>.

C. Denial of Motion to Extend Time to File Statewide Proposals

One party, Robert Mowris & Associates (Mowris), filed a motion to extend the December 14, 2001 statewide proposal deadline. Several parties opposed the motion on the ground that it would be unfair to participants who met the deadline. In view of the fact that Mowris did not serve his request until December 17, 2002, two days *after* the proposal deadline, it was untimely and is rejected. The Commission set the December 14, 2001 deadline in its December 3, 2001 decision (D.01-11-066). Therefore, there was ample time to make the motion between December 3 and 14, but Mowris did not do so.

D. Late Proposals

1. California State University

The California State University (CSU) served its local proposal on the e-mail service list on the due date, January 15, 2002, but filed it a day late. It gave the following explanation for the late filing:

The late filing at the Docket Office is the result of what was in all likelihood an electronic glitch or human omission. Specifically, both

of the CSU representatives -- myself of Grueneich Resource Advocates and Deborah Hill of CSU -- because we signed in and provided our e-mail addresses at the December 19 Commission workshop, were of record to receive electronic versions of the Commission's electronic cost-effectiveness spreadsheet from Commission staff person Eli Kollman (as per information and instructions he provided during the workshop). However, for some reason, neither of us received the latest updated version of the spreadsheet. I now know that three versions were sent: the original on December 20, a first revised version on December 21, and (as a result of my inquiries Tuesday and Wednesday) a second revised version on December 31. Both Ms. Hill and I received the first two transmissions, on the 20th and 21st. However, neither of us received the third transmission on December 31st, so we had no way of knowing that the December 21st version had been replaced. I determined subsequently that neither of us was on the electronic distribution list that Mr. Kollman used to transmit the new spreadsheet to other recipients on December 31st. Evidently, Mr. Kollman used a different -- and incomplete -- list for that transmission and update notification.

CSU's proposal team therefore prepared its proposal using an incorrect version of the spreadsheet. Mid-afternoon on Tuesday, Jan. 15, as we were completing our proposal for filing, I inadvertently learned that Mr. Kollman had failed to provide both Ms. Hill and myself with the proper version of the spreadsheet, and that we were using a technically incorrect spreadsheet (we could see that from the different ways the two versions calculated the cost-effectiveness tests). Once we learned of the problem, our proposal team worked as hard and as quickly as possible to make the changeover to the new spreadsheet so that we could submit a technically adequate proposal. It turned out that this changeover also raised substantive issues in our proposal, so fairly extensive discussions between proposal team members was necessary in order to make all the necessary changes. The unanticipated work resulting from this took approximately three hours. We successfully provided electronic service of our proposal on Tuesday, but we missed by a matter of a quarter hour making the deadline for filing physical copies at the Commission. It is clear but for the mixup in not

receiving the correct CPUC spreadsheet from Mr. Kollman that CSU would easily have made the Docket Office deadline.

A further point of information is that I actually called and talked to Mr. Kollman during the first or second week of January. I called him specifically to see if he was aware of any problems with the updated spreadsheet or if he had issued any further updates. (I had noticed a couple of problems with the Dec. 21 version, but none so apparently serious as to make it unworkable.) He told me that there were no significant problems that he was aware of and that he had issued no further updates. What is now apparent is that Mr. Kollman didn't notice that I had made reference to the Dec. 21 update (the last one I knew about, which I identified by date to distinguish it from his first version, sent on Dec. 20), so he presumably assumed that I was referring to his December 31 version. I therefore failed to learn that in fact there had been an update subsequent to his December 21 update. In talking with Mr. Kollman yesterday, he acknowledged that the fact of multiple spreadsheets being issued had been generally problematic, but did not specifically recall our conversation due to the large number of calls he received since the December 19 workshop.

On the basis of the foregoing, we request that the CSU filing be deemed accepted, due to the mixup in leaving Ms. Hill and myself off the December 31 distribution list and the unavoidable delay that this caused, the fact that all parties received the document electronically in a timely manner on January 15, and our prompt filing of the hard copies with the Commission on Wednesday morning, January 16.

Under the unique circumstances the CSU presents, I excuse the late filing so long as the facts underlying the CSU's request – timely service and filing one day late – are true.

2. Mowris

Mowris served his local "TXV and Tight Duct Incentives Proposal" on the e-mail service list on the due date, January 15, 2002, but filed it a day late. He gave the following explanation for the late filing:

We delivered one (1) unbound original and five (5) bound copies of our "TXV and Tight Duct Incentives" Local Program Proposal on January 15, 2002 at approximately 4:44 p.m., determined by my wristwatch, corrected by a call to 767-2676. I originally thought I delivered the proposal at approximately 4:50 p.m., but my watch was six minutes fast. We left our package on the table at the reception area of the CPUC. We also left one bound copy in your mail box.

I called the docket office on Wednesday, January 16th and Thursday, January 17th, to find out if our proposal was received by the docket office. The person I spoke with could not confirm that they received our package or even locate our package. Mr. George Lau of the Docket Office informed me on Friday, January 18, 2002, that our proposal was found and logged in on January 16, 2002, rather than at the time it was delivered on January 15, 2002. An electronic copy of our proposal was sent to the service list at 4:02 p.m. on January 15, 2002.

I am not sure why the docket office did not log our proposal in on January 15, 2002. I understand that the CPUC received many proposals on January 15, 2002, and also understand that it is possible that our proposal might have been misplaced, and that this might be the reason why the docket office logged our proposal in on January 16, 2002.

Our situation is not unique. Logistical problems and confusion regarding this historic filing have impacted other parties as well. Our situation is similar to the request you have already granted to Clyde Murley of Grueneich Resource Advocates (GRA). We would have been able to deliver our proposal earlier in the day on January 15, 2002, had we not had logistical problems with e-mail (noted to you on January 16, 2002). E-mail problems made it extremely difficult to communicate with our partners on the proposal (SCACD and Carrier-Aeroseal), and also made it difficult to send our proposal to the service list. As noted earlier, our e-mail box was full on Monday, January 14, 2001, and it shut down our capability to send and receive e-mail for several hours. This happened again several times on Tuesday, January 15, 2001. We contacted Earthlink (our ISP) regarding this problem and they

instructed us to delete all incoming files stuck in our e-mail box in order to allow our system to send and receive e-mail. We deleted incoming e-mail files several times on Tuesday and tried to send our proposal to the service list, only to find out minutes later that it was jammed again. This frustrating experience delayed our departure to the CPUC building by several hours. If we didn't have the e-mail problems, then we would have been able to deliver our proposal in the morning on January 15, 2002.

The combination of these logistical events caused delays that were unexpected and beyond our control. Nevertheless, we did deliver our proposal to the CPUC building before 5:00 p.m. on January 15, 2002. We did not put our proposal into the proper box and apparently it wasn't found until later, and, therefore, wasn't logged in as being delivered until January 16, 2002. We would appreciate it if you would consider these logistical problems in your decision. Given the importance of this matter, I would appreciate hearing from you at your earliest convenience. Thank you very much.

Under the unique circumstances Mowris presents, I excuse the late filing so long as the facts underlying Mowris' request – timely service and filing one day late – are true.

3. Other Local Proposals

I will consider as timely filed any local proposal that was either filed or served on or before January 15, 2002. Any party objecting to this determination shall file and serve a Notice of such objection no later than February 22, 2002 informing me of the proposal(s) they do not believe were timely submitted, and the basis for such belief.

4. Department of Consumer Affairs Statewide Proposal

I also grant the motion of the California Department of Consumer Affairs (DCA) to permit late service of its statewide energy efficiency proposal. The DCA timely filed its proposal on December 14, 2001, but served its proposal one week late on December 21, 2001. It explains in its Motion to Permit Late Service,

filed January 23, 2002, that it was not a party to the proceeding before filing its proposal, and was therefore unaware of the service requirement. It also could not have attended the workshop for *local* proposal applicants since that workshop occurred on December 19, after the service deadline for *statewide* applicants. PG&E commented on the proposal at length, and no other party alleged hardship in the delay in service. Thus, I excuse DCA's late service of its statewide proposal.

IT IS RULED that:

1. I grant Public Citizen, the California Department of Consumer Affairs (DCA), and Precision Reflector Designs, Inc. (Precision) "intervenor" / "party" status in this proceeding. Nothing in this ruling addresses any party's right to seek intervenor compensation.
2. Comments on the local energy efficiency proposals shall be served and filed on February 14, 2002 at 5:00 p.m. Pacific Time. This is a two-week extension of time. The proposals appear on the Commission's website at <http://www.cpuc.ca.gov/static/industry/electric/energy+efficiency/energy+efficiency+rulemaking.htm>. Reply comments shall be served and filed no later than March 15, 2002 at 5:00 p.m. Pacific Time.
3. I deny the motion of Robert Mowris & Associates (Mowris) to extend the filing deadline for statewide proposals.
4. I grant the requests of the California State University and Mowris to excuse their late filing of local proposals, so long as they timely served their proposals and filed them no more than one day late.
5. I will consider as timely filed any local proposal that was either filed or served on or before January 15, 2002. Any party objecting to this determination shall file and serve a Notice of such objection no later than February 22, 2002

informing me of the proposal(s) they do not believe were timely submitted, and the basis for such belief.

6. I grant the motion of the California Department of Consumer Affairs to permit late service of its statewide energy efficiency proposal.

Dated February 7, 2002, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Intervenor Status, Extending Time for Submission of Comments on Local Energy Efficiency Proposals, Denying Motion for Additional Time to File Statewide Energy Efficiency Proposals, and Excusing Late Filing or Service of Certain Energy Efficiency Proposals on all parties of record in this proceeding or their attorneys of record.

Dated February 7, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

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TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.